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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,323	07/15/2004	Kensuke Fujii	04853.0115	7887
22852	7590	07/13/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			KRECK, JOHN J	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/501,323	Applicant(s) FUJII ET AL.	
	Examiner John Kreck	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/28/06 has been entered.

Claims 1-3, 5-8, and 10 are pending

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3, 5-8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glaze, et al. (U.S. Patent number 5,593,888) in view of "Gardening Series Basics Choosing a Soil Amendment".

Glaze teaches the method of purifying contaminated soil comprising adding a soil improving material (unspecified "other amendments" column 15, line 40); and mixing the soil by agitation while adding microbes.

Glaze fails to explicitly disclose the nature of the amendments, and thus fails to disclose the water-absorbing properties and capability of maintaining non-swelling property and non-viscosity.

"Gardening Series" (page 3, under "Soil texture") teaches that it is advantageous to add perlite to clay soils to improve their permeability. Applicant's specification teaches that perlite inherently meets the claimed properties.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Glaze process to have included perlite as the "other amendment", in order to improve soil permeability, for example; thus resulting in the claimed properties called for in claim 1. With regards to the newly added claim limitation of "inorganic" soil improving material; perlite is an inorganic material. It is noted that the claim uses the open ended transitional phrase "comprising the steps of..." This language does not exclude other steps (such as adding sawdust). Furthermore, it is plain that the microbes (claim 2) are organic in nature. It is also observed that applicant contemplates the addition of other organic substances (nutrients, co-metabolites--page 11, second paragraph). Therefore the claim language is interpreted broadly, to allow for addition of organic additives.

With regards to claim 2; Glaze apparently discloses microbes not contained by the soil-improving material.

Glaze teaches aeration as called for in claim 3.

"Gardening Series" teaches perlite as called for in claim 5.

Regarding independent claim 6:

Glaze teaches the method of purifying contaminated soil comprising adding a soil improving material (unspecified “other amendments” column 15, line 40); and mixing the soil by agitation while adding microbes.

Glaze fails to explicitly disclose the nature of the amendments, and thus fails to disclose the water-absorbing properties and capability of maintaining non-swelling property and non-viscosity.

“Gardening Series” (page 3, under “Soil texture”) teaches that it is advantageous to add perlite to clay soils to improve their permeability. Applicant’s specification teaches that perlite inherently meets the claimed properties.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Glaze process to have included perlite as the “other amendment”, in order to improve soil permeability, for example; thus resulting in the claimed properties called for in claim 6. With regards to the newly added claim limitation of “inorganic” soil improving material; perlite is an inorganic material. It is noted that the claim uses the open ended transitional phrase “comprising the steps of...” This language does not exclude other steps (such as adding sawdust).

Furthermore, it is plain that the microbes (claim 7) are organic in nature. It is also observed that applicant contemplates the addition of other organic substances (nutrients, co-metabolites--page 11, second paragraph). Therefore the claim language is interpreted broadly, to allow for addition of organic additives.

Glaze teaches the microbes and soil-improving material separately added (see column 10, lines 36 and column 29, lines 29-30) as called of in claim 7.

Glaze teaches aeration as called for in claim 8.

"Gardening Series" teaches perlite as called for in claim 10.

Response to Arguments

2. Applicant's arguments filed 6/28/06 have been fully considered but they are not persuasive.

Applicant has asserted that Glaze allegedly teaches away from "inorganic soil improving material", and cites text from Glaze in support. This is not persuasive, since Glaze explicitly teaches the use of at least one inorganic soil improving material (sand, see col. 8, line 5). It is apparent that Glaze refers to organic amendments for use as nutrients.

Applicant has asserted that Glaze and/or the Gardening Series documents allegedly teach away from the claimed invention. This is not persuasive, since Glaze does not teach against the use of perlite. Teaching something different from the claimed invention is not the same as teaching away. With regards to the Gardening document, it is not relevant whether this document contradicts applicant regarding vermiculite, since the rejection is based on perlite. With regards to the teaching of the disadvantages of adding sand to clay; this compliments, rather than contradicts, the Glaze reference; which does not require adding sand to clay, as alleged by applicant. See col. 8, lines 6 and 7; and col. 12, lines 12 and 13.

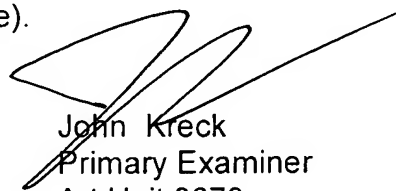
With regards to applicant's contention that there is no suggestion or motivation to modify; the advantages of adding perlite to soil are found in the Gardening document.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is 571-272-7042.

The examiner can normally be reached on Mon-Thurs 530am-2pm; Fri: telework.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Kreck
Primary Examiner
Art Unit 3673

9 July 2006